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 14 UNITED STATES DISTRICT COURT  
 15 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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17 TERRI SMITH and MICHELE  
 18 SMITH FREGOSO,

19 Plaintiffs,

20 vs.

21 STONEBRIDGE LIFE  
 INSURANCE COMPANY,

22 Defendant.

23 Case No. C 08-01466 JCS  
 24 Magistrate Judge Joseph C. Spero  
 JOINT STATEMENT OF  
 UNDISPUTED FACTS IN  
 CONNECTION WITH CROSS-  
 MOTIONS FOR PARTIAL  
 SUMMARY JUDGMENT ON  
 PLAINTIFFS' FIRST CAUSE OF  
 ACTION FOR BREACH OF  
 CONTRACT

25 Hearing Date: September 26, 2008  
 26 Hearing Time: 9:30 a.m.  
 Courtroom: A

27 Action Filed: September 5, 2007

Pursuant to Local Rule 56-2(b) and the Court's Civil Standing Order, Plaintiffs Terri Smith and Michele Smith Fregoso ("Plaintiffs") and Defendant Stonebridge Life Insurance Company ("Stonebridge") submit this Joint Statement of Undisputed Facts in connection with their respective Cross-Motions for Partial Summary Judgment on Plaintiffs' First Cause of Action for Breach of Contract.

| No. | Undisputed Fact ("UF")   | Supporting Evidence                                     |
|-----|--|---|
| 1   | Stonebridge issued Accidental Death and Dismemberment Policy No. 72A45PO585 to Diane Geraldine Hall-Hussain effective November 7, 2005 (the "Policy").                               | Stipulation Authenticating Exhibits ("SAE"), Exhibit A. |
| 2   | The Policy was in effect on the date of Ms. Hall-Hussain's death.  | SAE, Exhibit A.   |
| 3   | At all relevant times, Ms. Hall-Hussain was a resident of the State of California.   | SAE, Exhibits A and B.                                  |
| 4   | The Policy provided accidental death benefits in the amount of \$50,000 in the event of Ms. Hall-Hussain's accidental death, subject to the exclusions and provisions of the Policy. | SAE, Exhibit A.   |
| 5   | Ms. Hall-Hussain was found dead in her residence on April 9, 2007.   | SAE, Exhibit B.   |
| 6   | Ms. Hall-Hussain's death was investigated by Humboldt County Deputy Coroner Roy Horton.  | SAE, Exhibit B.   |

| No. | Undisputed Fact (“UF”)   | Supporting Evidence   |
|-----|--|---|
| 7   | Deputy Coroner Horton prepared a Death Investigation Report detailing his findings.  | SAE, Exhibit B; Deposition of Roy Horton (“Horton Depo.”) at 22:3-15, attached as Exhibit K to the SAE. |
| 8   | The final Death Certificate, issued on April 26, 2007, listed the immediate cause of Ms. Hall-Hussain’s death as “Oxycodone Intoxication.” | SAE, Exhibit C at p. 14.  |
| 9   | The Death Certificate states that the manner of death was “accidental.”  | SAE, Exhibit C at p. 14.  |
| 10  | The Death Certificate also states: “Decedent took an accidental overdose of Oxycodone.”  | SAE, Exhibit C at p. 14.  |
| 11  | Dr. Chen was Ms. Hall-Hussain’s primary physician between July 7, 2004 and the date of her death.  | Deposition of Dr. Chia Chen (“Chen Depo.”) at 18:25-19:4, attached as Exhibit J to the SAE.             |
| 12  | OxyContin is a narcotic painkiller used to treat pain.   | Chen Depo. at 30:4-8, attached as Exhibit J to the SAE.   |
| 13  | Oxycodone is a generic form of Oxycontin.  | Chen Depo. at 25:1-5, attached as Exhibit J to the SAE.   |
| 14  | Dr. Chen prescribed OxyContin for Ms. Hall-Hussain from April 21, 2005 through the date of her death.                                      | Chen Depo. at 24:9-25, 42:11-43:1, attached as Exhibit J to the SAE.                                    |

| No. | Undisputed Fact ("UF")  | Supporting Evidence   |
|-----|---|---|
| 15  | Dr. Chen prescribed OxyContin to treat Ms. Hall-Hussain's intractable pain.   | Chen Depo. at 24:6-11, attached as Exhibit J to the SAE; SAE, Exhibit D at p. 15. |
| 16  | Dr. Chen last saw Ms. Hall-Hussain on April 3, 2007 and at that time increased the dosage of the OxyContin from two 40mg pills three times per day to three 40mg pills three times per day. | Chen Depo. at 48:7-49:12, attached as Exhibit J to the SAE.                       |
| 17  | Plaintiffs Terri Smith and Michele Smith Fregoso submitted a claim for benefits to Stonebridge on April 27, 2007.   | SAE, Exhibit E.   |
| 18  | Plaintiffs are the beneficiaries of the Policy in equal shares.   | SAE, Exhibit F and Exhibit A at p. 5.   |

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| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13 | <p>19 By letter dated June 12, 2007,<br/>     Stonebridge notified Plaintiffs that it was<br/>     denying their claim for accidental death<br/>     benefits under the following two Policy<br/>     exclusions: "No benefit shall be paid for<br/>     injury that: . . . 3. is caused by or results<br/>     from the Covered Person's taking or<br/>     using any narcotic, barbiturate or any<br/>     other drug unless taken or used as<br/>     prescribed by a Physician; * * * [or] 7. is<br/>     due to disease, bodily or mental infirmity,<br/>     or medical or surgical treatment of these."</p> | SAE, Exhibit G. |
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 15 Dated: August 13, 2008 MANATT, PHELPS & PHILLIPS, LLP  
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 permission granted on 8/13/2008.)  
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